IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

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WRIT PETITION NO : 30207 of 1995

Between:

M/s.National Textile Corpn.(APKK&M) Ltd., Gunfoundry, Hyd.

Rep. By its Divisional Manager Sri C.S.Gopala Krishna.

..... PETITIONER

AND

1 The Appellate Authority u/s.48(1) of Shops & Estt.Act,1988

of the Asst.Commr.of Labour , Hyd(III),
Anjaiah bhavan, RTC X Roads,
Hyd.
2 Sri G. Eshwar Rao since expired rep.by its Legal Representatives.
3 Smt.G. Radha Bai, W/o Late Sri G. Eswar Rao
4 Sri Praveen Kumar S/o Sri G. Eshwar Rao
5 Sri G. Kamala Kumar, S/o Sri G. Eshwar Rao
6 Sri G.Vijay Kumar, S/o.Sri E.Eshwar Rao,

(R6 dismissed for default as per order dt.13.2.2003)
7 Govt.of A.P., rep. by its Secy I/C labour,
Secretariat, Hyd.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue notice, call for the records and quash and set aside the two provisios to Sub-Section.3 of Sec.48 of A.P Shops & Estts. Act.1988

(Act.No.20 of 1988) and to declare the same as null, void and inoperative and or to quash and setaside the order made in S.E.No.113 of 1992 dt.18-10-1995 by the Appellate Authority under Sec. 48(1) of A.P Shops & Act.1988 and the Asst. Commissioner of Labour Hyderabad-III (Respondent No.1 herein) by issuing a Writ of Certiorari or any other appropriate or order or direction as the Hon'ble Court deems fit and proper in the circumstances of the case and grant such other relief to which the petitioner is found entitled to.

Counsel for the Petitioner: MR.P.NAGESWAR SREE

Counsel for the Respondent Nos.1 and 7: GP FOR LABOUR

Counsel for the Respondent No.3: B.G.Ravinder Reddy

Counsel for the Respondent Nos.4 and 5: None appeared.

The Court made the following :

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O R D E R:

The Writ Petition is filed challenging the Order dated 18-10-1995 passed by the first respondent-Appellate Authority under Section 48(1) of Andhra Pradesh Shops and Establishments Act, 1988 and Assistant Commissioner of Labour, Hyderabad-III, (for short “the appellate authority”), in S.E.No.113 of 1992.

2. The second respondent, Sri G.Eshwar Rao, who was working in the National Textile Corporation Limited, Gunfoundary, Hyderabad, was removed from service. Aggrieved by the said removal, he filed an appeal before the appellate authority constituted under provisions of the Andhra Pradesh Shops and Establishments Act, 1988. However, during the pendency of the appeal, the second respondent herein died and his legal representatives were brought on record. The learned appellate authority, after considering the matter, held that the termination of the second respondent from the service was not justified and as there was no scope for reinstatement, the appellate authority directed the Management to appoint the wife of the deceased-workman on compassionate ground. The said order came to the challenged in this writ petition.

3. Without going into the merits of this case, this court observed about the maintainability of the writ petition itself. Under the provisions of Andhra Pradesh Shops and Establishments Act, 1988, the statutory second appeal is provided against the order passed by the appellate authority and the Management has not availed the remedy of second appeal provided under the statute.

4. The learned counsel for the petitioner-Management submits that when the order of the appellate authority is without jurisdiction, this court can entertain the application under Article 226 of the Constitution of India and pass appropriate orders. He placed reliance on ***ALLIED SALES CORPORATION, SECUNDERABAD*** *v.* ***THE AUTHORITY UNDER SECTION 41 OF A.P.SHOPS AND ESTABLISHMENTS ACT AND THE ASSISTANT COMMISSIONER OF LABOUR CIRCLE-II, HYDERABAD****;* ***M.RAJA RAO*** *v.* ***GOVERNMENT OF ANDHRA PRADESH, HYDERABAD*** and ***ORIENTAL SELECT GRANITES PRIVATE LIMITED v. DIRECTOR OF MINES AND GEOLOGY AND OTHERS****.*

5. It is to be seen in the instant case that when a regular statutory second appeal is provided, even though the jurisdiction is raised, it is

always open for the petitioner to raise the said issue before the second appellate authority, which could consider the same and pass appropriate orders.

6. Under those circumstances, I am not inclined to entertain the writ petition as the Management failed to avail the remedy before the second appellate authority, which is provided under the statute.

7. Accordingly, the writ petition is dismissed. No costs.

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G.BIKSHAPATHY, J

Date: 11-02-2005

Prv/Km

To

1 The Appellate Authority u/s.48(1) of Shops
& Estt.Act,1988 of the Asst.Commr.of Labour,
Hyd(III), Anjaiah bhavan, RTC X Roads, Hyderabad.

2 Two CCs to G.P. for Labour, High Court of A.P.,
Hyderabad (OUT).

3 The Secretary Incharge Labour,
Govt.of A.P.,
Secretariat, Hyd.

4 Two CD copies.